

1 THIERMAN BUCK LLP
2 MARK R. THIERMAN, ESQ.
3 Nevada State Bar No. 8285
mark@thiermanbuck.com
3 JOSHUA D. BUCK, ESQ.
Nevada State Bar No. 12187
4 josh@thiermanbuck.com
5 LEAH L. JONES, ESQ.
Nevada State Bar No. 13161
leah@thiermanbuck.com
6 7287 Lakeside Drive
Reno, Nevada 89511
7 Telephone: (775) 284-1500
Facsimile: (775) 703-5027
8

9 CHRISTINE E. WEBBER, ESQ.
(Admitted Pro Hac Vice)
cwebber@cohenmilstein.com
10 BRIAN CORMAN, ESQ.
(Admitted Pro Hac Vice)
bcorman@sohenmilstein.com
11 COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave., NW, Ste 500
13 Washington, DC 20005

14 TOWARDS JUSTICE
15 ALEXANDER HOOD, ESQ.
(Admitted Pro Hac Vice)
alex@towardsjustice.org
16 1535 High Street, Ste. 300
17 Denver, CO 80218

18 *Attorneys for Plaintiffs*

19 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

20 ABEL CANTARO CASTILLO on behalf of himself
21 and those similarly situated,

CASE NO. 3:16-cv-00237-RCJ-CLB

22 Plaintiff,

23 vs.

24 WESTERN RANGE ASSOCIATION
25 Defendant.

26 **PLAINTIFF'S MOTION FOR PROTECTIVE ORDER**

27 Pursuant to Rule 26(c), Plaintiff seeks a protective order postponing the deposition of
28

1 Plaintiff Abel Cántaro Castillo. Plaintiff, a citizen of Peru, who resides in Peru, has applied for a
 2 visa to travel to the United States to appear for his deposition. However, he has not yet received his
 3 visa. Counsel for WRA has been kept informed of his visa application progress, and that he has an
 4 interview at the consulate on March 11, 2020, which is the next step in the process. Nonetheless,
 5 WRA has refused to re-schedule the deposition of Mr. Cántaro Castillo, which is set for today,
 6 February 25, 2020 at 9:00 AM, unless Plaintiff agrees to delay all other depositions until after Mr.
 7 Cántaro Castillo's deposition is completed. Because Plaintiff cannot control when or if the visa will
 8 be granted, and there are other deadlines looming which cannot be met while Defendant refuses to
 9 produce a WRA representative for deposition, Plaintiffs seek a protective order.

10 While this action was filed in 2016, briefing on multiple motions to dismiss and an appeal to
 11 the Ninth Circuit occupied most of the first three years of the case's history. Following remand to
 12 this Court, Defendant answered the complaint on October 31, 2019, and discovery opened on
 13 November 1, 2019. That same day, Defendant noticed Plaintiff's deposition for January 7, 2020.
 14 Plaintiff's counsel began working on his visa application, learned that his Peruvian passport had
 15 expired and that he would need to get a new one, and notified counsel for WRA that this would
 16 delay his visa application. Plaintiff obtained his new Peruvian passport on December 23, 2019, and
 17 a copy was provided to WRA, who agreed to remove the January 7 deposition from the calendar.
 18 On January 29, WRA noticed Plaintiff's deposition for February 25, 2020.

19 In January, Plaintiffs completed the visa application, including consulting with separate
 20 immigration counsel to maximize the chance that the visa would be granted. The visa application
 21 was submitted on February 3, and the confirmation of the visa application was produced to counsel
 22 for WRA on February 4, 2020. Plaintiffs counsel have regularly updated counsel for WRA
 23 regarding the progress of the visa application process, and counsel for WRA was aware that the visa
 24 had not yet been granted. Plaintiff offered a video deposition on February 25, which WRA refused.
 25 Counsel conferred on February 24 and counsel for WRA stated her intention to proceed with the
 26 deposition, while knowing that Plaintiff had been unable to secure a visa yet to enter the United
 27 States. Counsel continued to try to resolve the issue late into the evening of February 24, and with a
 28 final exchange this morning. Since the parties were unable to reach agreement, Plaintiff requests a

protective order be issued, directing that Mr. Cántaro Castillo's deposition not take place until a visa has been issued permitting him to travel to the United States, or that his deposition be taken by video, or in person in Peru if resolution of the visa issue would cause undue delay in the case.

4 This Court permits issuance of a protective order when “good cause” is shown. *U.S.*
5 *E.E.O.C. v. Caesars Entm’t, Inc.*, 237 F.R.D. 428, 432 (D. Nev. 2006). This Court has recognized
6 that when a plaintiff’s deposition is scheduled for a date when the plaintiff is not physically present
7 in the state, that good cause was shown, and the deposition should be rescheduled. *Hansen v.*
8 *Environmentalists Commercial Servs. Co.*, No. 206CV00868BESLRL, 2008 WL 11450899, at *7 (D.
9 Nev. Feb. 27, 2008). That parallels the circumstances here, where Plaintiff clearly cannot simply
10 travel to the United States without a visa. Moreover, Defendant’s attempt to impose conditions on
11 any rescheduling, in which depositions sought by plaintiffs must be delayed until this deposition is
12 completed is inconsistent with Fed. R. Civ. P. 26(d)(2)(B), as courts have recognized. *Houserman v.*
13 *Comtech Telecommunications Corp.*, No. 2:19-CV-00336-RAJ, 2019 WL 6052407, at *2 (W.D.
14 Wash. Nov. 15, 2019). Here good cause has been shown, as set forth above, and a protective order
15 is appropriate.

16 A declaration detailing the parties' communications on this issue and Plaintiffs' good faith
17 efforts to resolve it is filed concurrently in support of this motion.

COHEN MILSTEIN SELLERS & TOLL PLLC

/s/Christine E. Webber
CHRISTINE E. WEBBER, ESQ.
(Admitted Pro Hac Vice)
cwebber@cohenmilstein.com
BRIAN CORMAN, ESQ.
(Admitted Pro Hac Vice)
bcorman@sohenmilstein.com
1100 New York Ave., NW, Ste 500
Washington, DC 20005

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4 leah@thiermanbuck.com
5 7287 Lakeside Drive
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7 Telephone: (775) 284-1500
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9

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12 (Admitted Pro Hac Vice)
13 alex@towardsjustice.org
14 1535 High Street, Ste. 300
15 Denver, CO 80218
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19
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2020, a true and correct copy of the foregoing was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By: /s/ Christine E. Webber
Christine E. Webber